

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE UNION)	
LIGHT, HEAT AND POWER)	
COMPANY TO CLARIFY)	CASE NO. 8774
APPLICATION OF THE)	
INTERRUPTIBLE SERVICE RIDER)	

O R D E R

On February 22, 1983, the Union Light, Heat and Power Company ("ULH&P") filed an application with the Commission for authorization to supplement the language of its Interruptible Service Rider ("Rider IS"), sheet No. 52 of its tariff P.S.C. Ky. No. 3. ULH&P requested the tariff change to be effective November 14, 1982, the date that its Rider IS became effective. The application contained a certification that copies were served upon counsel for Newport Steel Corporation ("Newport") and the Office of the Attorney General, Consumer Protection Division ("A.G.").

On March 25, 1983, Newport filed a motion to dismiss ULH&P's application and a memorandum in support thereof. On April 8, 1983, ULH&P filed a memorandum in opposition to Newport's motion to dismiss. A hearing was held on April 20, 1983, at the Commission's offices in Frankfort, Kentucky. ULH&P gave notice of the hearing pursuant to KRS 424.300. The A.G. intervened and participated in the hearing.

Appendix A attached to this Order illustrates ULH&P's proposed revision to Rider IS with the supplemental proposed language being underlined and the language to be deleted being lined through. The only significant change proposed is that the interruptible demand credit will be applied to the interruptible power load only when the customer is directed to interrupt. ULH&P alleges that the existing language in its Rider IS is ambiguous and subject to the misinterpretation that the demand credit is applied irrespective of electric load interruption.

Newport's motion to dismiss is based on three grounds. The first is an allegation that the application is in fact an application to change rates and ULH&P has not satisfied the notice requirements of KRS 278.180 and the rate filing requirements of 807 KAR 5:001, §6 and §9.

ULH&P's application states that the supplemental language is needed to avoid a revenue loss of approximately \$720,000 per year. This loss would occur because Rider IS allows the demand credit to be applied irrespective of load interruption. Although the tariff change is to prevent the loss of revenue and not to produce additional revenue, the net effect is the same. The proposed tariff produces revenue of \$720,000, and this clearly constitutes a change in rates.

ULH&P's application gave notice to the Commission that the proposed tariff change was to be made effective retroactive to November 14, 1982. It is a well settled principle that the Commission's rate-making function is to set rates prospectively not retroactively. ULH&P's failure to comply with the 20 days'

notice requirement of KRS 278.180 affords no basis to dismiss its application. The application or tariff filing is processed as a request to change rates upon Order of the Commission pursuant to KRS 278.190.

Regarding ULH&P's compliance with the rate filing requirements of 807 KAR 5:001, §6 and §9, the Commission finds that although the requirements have not been satisfied, 807 KAR 5:001 §13 authorizes the Commission to permit deviations for good cause shown. In this case, ULH&P's change in rates is to correct an improperly worded tariff in order to collect the revenues awarded by this Commission by Order dated November 15, 1982, in Case No. 8509, In Re: An Adjustment of Electric Rates of ULH&P. The change in rates will not produce any additional revenue in excess of the revenue level authorized in Case No. 8509. ULH&P's 1982 annual report contains detailed financial exhibits covering its operations for calendar year 1982 and is a part of the record in this case. Based upon the finding that the change in rates will not produce additional revenue and the financial exhibits contained in the 1982 annual report, the Commission finds that ULH&P should be permitted to deviate from 807 KAR 5:001, §6 and §9.

The second ground to support Newport's motion to dismiss is an allegation that there is no procedure under Kentucky law whereby a utility, on its own motion, may clarify or supplement an existing tariff. Based upon the Commission's findings supra that ULH&P's application is a change in rates pursuant to KRS 278.190, this ground lacks merit.

Newport's third ground is an allegation that it has an existing 1-year contract right with ULH&P to receive service under Rider IS. Consequently, Newport argues that the Commission is prohibited from changing Newport's contract rate.

The application of Rider IS is expressly limited to customers who:

(2) enter into a written Service Agreement with the Company [ULH&P] which Service Agreement shall specify among other rules and regulations, the levels of interruptible power load, and firm power load.

Since the billing demand credit is a function of both the customer's interruptible power load and firm power load, it would be impossible to determine the credit without this load data.

Newport has not entered into any written service agreement with ULH&P. Newport alleges the existence of a contract by estoppel arising out of a February 21, 1983, letter it sent to ULH&P. That letter fails to disclose Newport's level of interruptible load. Consequently, ULH&P has not been provided with sufficient data to calculate Newport's demand credit. Since a requisite term of the Rider IS service agreement is missing, there can be no contract.

Turning to the merits of the proposed change in rates, the Commission finds that ULH&P's proposal to offer an interruptible tariff with a demand credit applied only during the months of actual service interruption would introduce an element of uncertainty to the demand credit. ULH&P's proposal would negate any positive benefits of having a published rate and is contrary

to the Commission's objectives stated in Administrative Case No. 203, The Determinations With Respect to the Ratemaking Standards Identified in Section 111(d)(1)-(6) of the Public Utility Regulatory Policies Act of 1978.

The Commission further finds that ULH&P's existing Rider IS provides sufficient contracting flexibility to prevent the erosion of substantial revenues due to any one customer's service under Rider IS.

IT IS THEREFORE ORDERED that ULH&P's application for authority to supplement the language of its Interruptible Service Rider be and it hereby is denied.

Done at Frankfort, Kentucky, this 1st day of July, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary

RIDER IS
INTERRUPTIBLE SERVICE RIDER

APPLICABILITY

Applicable to customers receiving service under the provisions of either Rate DS, Service at Distribution Service Voltage, or Rate TS, Service at Transmission Service Voltage. In addition, the customer is required to: (1) have had an actual demand of not less than one thousand (1,000) kilowatts in each of the twelve (12) months preceding application for this rider; (1)(2) demonstrate to the Company's satisfaction that a minimum electric load of one thousand (1,000) kilowatts is available which may be purposefully interrupted or curtailed for interruption at the discretion and direction of the Company; (2)(3) enter into a written Service Agreement with the Company which Service Agreement shall specify, among other rules and regulations, the amount of levels of interruptible power load, and firm power load, and the maximum annual hours of interruption; and (4) demonstrate to the Company's satisfaction that the interruptible power load can be interrupted and interrupted immediately when directed by the Company for fourteen (14) consecutive hours during any twenty-four (24) hour period.

NET MONTHLY BILL

Computed in accordance with the provisions of either Rate DS or Rate TS except there shall be an interruptible demand credit applied to the interruptible power load when the Company directs the customer to interrupt such load and the customer's demand does not exceed its firm power load for the period of interruption.

The demand credit shall be computed in accordance with one of the following provisions table:

<u>Maximum Annual Hours of Interruption</u>	<u>Demand Credit per kilowatt of Interruptible Power Load</u>
225	\$0.81
300	\$1.07
375	\$1.32
450	\$1.62
525	\$1.87
600	\$2.13
675	\$2.38

Failure by the customer to comply with each an interruption order of the Company shall be considered as use of unauthorized power which shall be billed at the rate of \$5.00 per kilowatt based upon ~~the highest fifteen (15) minute demand created during the period for which the customer was notified to reduce the level of power~~ load for the highest number of kilowatts of demand in excess of the firm power load during the period of interruption ordered by the Company.

~~In addition, the "Net Monthly Bill" shall be computed in accordance with the provisions of the applicable tariff, either Rate-D5 or Rate-F5, exclusive of the interruptible demand credit.~~ Determination of compliance by the customer shall be made solely by the Company based upon the recordings of installed metering devices.

TERMS AND CONDITIONS

The interruptible power load will be determined by the Company based on the customer's current and historic operations reflected in the customer's recorded usage during potential periods of interruption.

The interruptible demand credit may be discontinued by the

Company, upon thirty (30) days written notice to the customer, in the event that the customer fails to ~~effectuate the interruption of power during an interruptible period for~~ comply with two (2) consecutive billing periods interruption orders of the Company.

The terms of service for the Interruptible Service Rider shall be for a minimum period of one (1) year and shall continue in effect thereafter until terminated by the Company or the customer upon ninety (90) days written notice.

The supplying and billing for service and all conditions applying thereto, are subject to the jurisdiction of the Kentucky Public Service Commission, and to Company's Service Regulations currently in effect, as filed with the Kentucky Public Service Commission.